

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0537
RESPONSIBLE OFFICER
WITHHOLDING TAX
For Tax Period 1997-2003**

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Issue

I. Withholding Tax -Responsible Officer Liability

Authority: IC 6-3-4-8 (g), IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of corporate withholding taxes against her as a responsible officer.

Statement of Facts

The taxpayer was listed on Indiana Department of Revenue (department) records as vice president of a corporation that did not remit the proper amount of withholding taxes to Indiana for the tax period 1997-2003. She was formerly married to the president of the corporation. When the marriage ended, the husband was awarded the corporation in the divorce settlement. The taxpayer received shares of corporate stock in the settlement. The department assessed the outstanding corporate withholding taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability

Discussion

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer contended that she was not responsible for the payment of the taxes to the state because she did not have any involvement with the operation of the corporation or control over

the financial affairs of the corporation. The taxpayer offered adequate documentation to sustain her burden of proving that she was not responsible for the remittance of the trust taxes to the state during the tax period at issue.

Finding

The taxpayer's protest is sustained.

KMA/JMM/DK/06/21/02